

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Comprehensive Review of Universal Service Fund)	WC Docket No. 05-195
Management, Administration, and Oversight)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

COMMENTS OF THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE
31 Clinton Street, 11th Floor
Newark, NJ 07102
(973) 648-2690 - Phone
(973) 648-2193 - Fax
www.rpa.state.nj.us

On the Comments:

Christopher J. White, Esq., Deputy Ratepayer Advocate
Ava-Marie Madeam, Esq., Asst. Deputy Ratepayer Advocate

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I. INTRODUCTION

The New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) submits these comments in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission (“FCC” or “Commission”) on June 14, 2005 seeking comments with respect to its review of the management and administration of the Universal Service Fund (“USF”) and the Commission’s oversight of the USF and USF administrator.¹

¹/ *In the Matter of Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6; *Rural Health Care Support Mechanism*, WC Docket No. 02-60; *Lifeline and Link-Up*, WC Docket No. 03-109; *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, rel. June 14, 2005 (“NPRM”).

A. INTEREST OF THE RATEPAYER ADVOCATE IN THE INSTANT PROCEEDING.

1. The Ratepayer Advocate Has a Distinct Interest in this Proceeding.

The Ratepayer Advocate is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Ratepayer Advocate participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to the Ratepayer Advocate's continued participation and interest in implementation of the Telecommunications Act of 1996 ("Act" or "1996 Act").²

New Jersey consumers' interests concern, among others, the following:

- As net contributors to the Universal Service Fund, New Jersey consumers have an interest in ensuring that the Commission and USF administrator properly manage the fund such that program funding is sufficient, but not excessive, and administrative costs and fraud are minimized. Ultimately, consumers pay the costs resulting from poor oversight and mismanagement.
- As users of the public switched network, seeking to communicate with consumers throughout the nation, New Jersey consumers have an interest in ensuring that all consumers have reasonable access to the network. As has been long-recognized, the value of the network increases as the number of subscribers increases.

^{2/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

2. Relationship to other Commission proceedings.

The Commission's review of the administration of the USF relates directly to other pending proceedings. For example, the issues that the Commission is considering in this proceeding relate to the outcome of the Commission's investigation of intercarrier compensation in CC Docket No. 01-92. In that docket, the Ratepayer Advocate urged the linkage between the demonstration of quality services and universal service fund disbursement, which is a continuing concern of the Ratepayer Advocate:

Furthermore, the Ratepayer Advocate concurs with the recommendations of the Iowa Utilities Board that Lifeline customers should be exempt from any incremental increase in monthly charges that result from intercarrier compensation, and also that states "should condition distribution of universal service funds based on an appropriate demonstration that the carrier is providing quality services at reasonable rates throughout their supported areas."³

The Ratepayer Advocate continues to recommend that carriers' receipt of universal service funds should be linked to the demonstration of the provision of quality service throughout their supported areas.

The Ratepayer Advocate also recently submitted comments in the FCC's proceeding examining proposals for reforming the manner in which rural carriers receive funding through the USF's high-cost mechanism. In those comments, the Ratepayer Advocate, observed about the high-cost mechanism:

A price increase of \$2.3 billion over an eight-year period during a period of declining costs in the telecommunications industry raises significant questions about the high cost fund. The Ratepayer

^{3/} *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Reply Comments of the New Jersey Division of the Ratepayer Advocate at 8, citing Comments of the New York Department of Public Service at 11, citing Iowa Utilities Board, at 3.

Advocate urges the Commission to distinguish between the sources of growth in the high cost fund that are inevitable and appropriate, and those reasons which relate to inefficient economic incentives and/or improper cross-subsidization, which the Commission should remedy.⁴

By the same token, the Commission should examine in this proceeding whether the dramatic increases in the total size of the fund can be attributed to fraud, mismanagement, or both.

B. SCOPE OF THE NPRM.

The Commission's *NPRM* commences a "broad inquiry into the management and administration of the Universal Service Fund (USF), as well as the Commission's oversight of the USF and the USF Administrator."⁵ The Commission also seeks input from interested parties on proposals for assessing the success of the program, including specific performance measures. The Commission is seeking ways to simplify the application, collection, and disbursement process and to deter intentional fraud and abuse of the program.⁶ The Commission states that it intends "to address these concerns by finding constructive ways to continue meeting the needs of those who depend on the USF, while at the same time ensuring that the public is confident that the funds are used for their intended purpose."⁷

Despite having appointed the Universal Service Administrative Company ("USAC"), a subsidiary of the National Exchange Carrier Association ("NECA"), as the USF administrator subject

⁴/ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the New Jersey Division of the Ratepayer Advocate, September 30, 2005, at 27.

⁵/ *NPRM*, at para. 1.

⁶/ *Id.*, at para. 2.

⁷/ *Id.*

to a one year review, USAC's performance has never been reviewed.⁸ The Commission now seeks comments on USAC's performance as well as proposals regarding whether the services should be put out to competitive bid. The USF consists of four programs, all administered by USAC. The programs include universal service mechanisms for:

1. high cost areas, providing financial support to carriers serving high cost areas;
2. schools and libraries (or E-rate program);
3. low income consumers, assisting low income consumers with discounted installation and monthly telephone services; and
4. rural health care, providing discounted services to rural health care providers.⁹

In its *NPRM*, the Commission states that it “is in the process of compiling USF performance measures, particularly for the Schools and Libraries program and the High Cost program, in order to comply with the Office of Management and Budget (“OMB”) Program Assessment Rating Tool (“PART”) requirements.” The Commission seeks comments on “additional performance measures and goals that we can use to track progress and efficiency for all the universal service programs.”¹⁰

Additionally, the Commission seeks input from interested parties as to whether the Commission should adopt specific targets and goals for either the administrator or program participants. The Ratepayer Advocate commends the Commission for commencing this inquiry and addresses some of these issues in these initial comments. The Ratepayer Advocate intends to review the information submitted by other participants on a variety of the issues for which the Commission is seeking

⁸/ *Id.*, at para. 11.

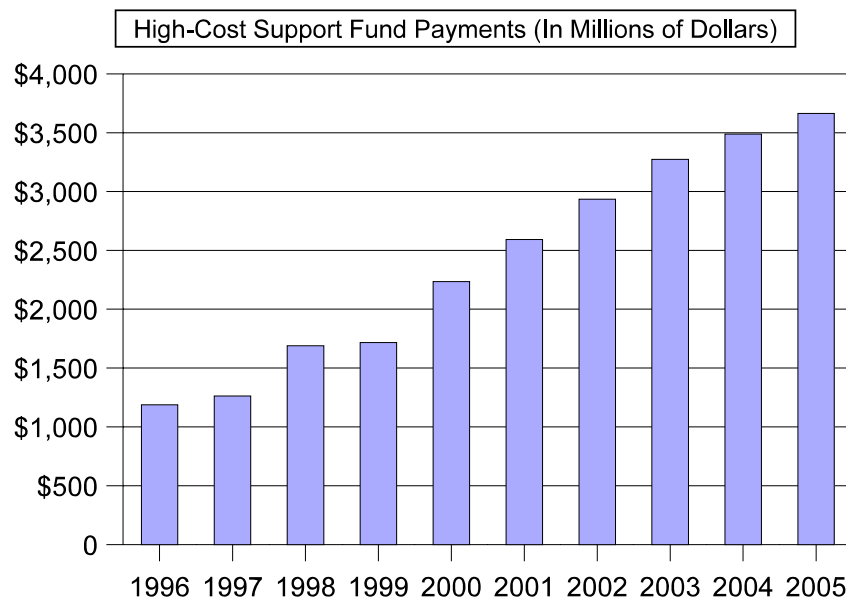
⁹/ *Id.*, at para. 5.

¹⁰/ *Id.*, at para. 24.

comments and submit more detailed reply comments based on its review and analysis of this material.

II. EXISTING UNIVERSAL SERVICE SUPPORT

Total disbursements for all universal service mechanisms in 2004 were \$5.43 billion,



including: nearly \$3.5 billion for the high cost support mechanism; \$759-million for the low income program; nearly \$15-million for the rural healthcare program; and nearly \$1.2 billion for the schools and libraries program.¹¹ The high-cost fund represents the largest portion of total USF disbursements totaling 64.2% of the fund in 2004.¹² As the figure below shows, high-cost fund payments have grown from approximately \$1.2 billion in 1996 to an estimated \$3.7 billion in 2005.¹³ The astronomical

^{11/} Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Tables Compiled as of April 2005, at Table 19.1.

^{12/} *Id.*, at Chart 19.1.

^{13/} *Id.*, at Table 19.3. Data for 2005 based on Universal Service Administrative Company (USAC) projections.

growth of the high cost fund (and the entire USF) during a period of declining costs in the telecommunications industry is troubling for consumers who ultimately foot the bill. The outcome of this proceeding should ensure that concerns regarding mismanagement and fraud are addressed and that consumers are assured that the funds are being used in an efficient manner. In its recent comments in CC Docket No. 96-45 in response to the Joint Board, the Ratepayer Advocate “urges the Commission to scrutinize the reasons for the growth, and to implement mechanisms to prevent unnecessary use of the fund.”¹⁴ New Jersey has a negative net dollar flow, *i.e.*, New Jersey consumer contributions made up 4% of the total fund in 2003 and payments to New Jersey service providers amounted to just 0.74% of the total payments.¹⁵ In 2004, New Jersey received a negligible \$1.2 million of the total \$3.5 billion in high-cost support disbursements (that is, only three-hundredths of one percent).¹⁶ The Universal Service Fund contribution factor for the first quarter of 2005 was 10.7%; carriers contribute based on “projected, collected, end-user interstate and international telecommunications revenues.” Prior to the second quarter of 2003, carriers contributed based on historical gross-billed revenues.¹⁷

^{14/} *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the New Jersey Division of the Ratepayer Advocate, September 30, 2005, at 11.

^{15/} *Universal Service Monitoring Report*, FCC CC Docket No. 98-202, prepared by Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, 2004 (Data received through May 2004), at Table 1.12.

^{16/} Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Tables Compiled as of April 2005, at Table 19.4.

^{17/} *Id.*, at Table 19.16 and footnote 4 to Table 19.16.

III. THE COMMISSION SHOULD ADOPT ADEQUATE SAFEGUARDS AGAINST FRAUD AND ABUSE AND IMPROVE EFFICIENCY WHERE FEASIBLE WHILE CONTINUING TO PROVIDE SUFFICIENT SUPPORT FOR UNIVERSAL SERVICE PROGRAMS.

The Ratepayer Advocate recognizes that the USAC and independent auditors have conducted numerous audits of program beneficiaries and contributor compliance.¹⁸ However, the Commission should consider engaging a third-party auditor to examine USAC's operations. Section 54.702(g) requires that USAC submit an annual audit report,¹⁹ however, an independent audit may be warranted. This is particularly the case given that USAC's performance has never undergone the promised year one review.²⁰

At a minimum, the Commission should review the comments in this proceeding as to whether the USAC "has administered the USF in an efficient, effective, and competitively neutral manner."²¹ The Ratepayer Advocate is concerned that although USAC had been the administrator for six years, for the first time, in August 2004, the Commission sought a list of all of USAC's program procedures for the Schools and Libraries program and is just now, in this *NPRM*, seeking a similar list of administrative procedures for the High Cost, Low Income, and Rural Health Care programs.²²

No matter the performance of the administrator, the Commission should put serious consideration and effort into developing stronger oversight mechanisms. A recent report by the U.S. Government Accountability Office ("GAO") concluded the following with respect to the FCC's

¹⁸/ *See, e.g., NPRM*, at para. 6.

¹⁹/ *Id.*, at para. 17.

²⁰/ *Id.*, at para. 11

²¹/ *Id.*

²²/ *Id.*, at para. 22.

management of the E-rate (schools and libraries) program:

FCC's rulemakings have often lacked specificity and led to situations where USAC, in crafting the details needed to operate the program, has established administrative procedures that arguably rise to the level of policy decisions, even though USAC is prohibited from making program policies. This creates a situation where important USAC administrative procedures have been deemed unenforceable by FCC with regard to the recovery of funds for violations of those procedures. While audits have been conducted on E-rate beneficiaries, FCC has been slow to respond to audit findings in the past. Also, neither FCC nor USAC have conducted an accurate assessment of the level of waste, fraud, and abuse in the program.²³

The Commission suggests that it intends to “build on the lessons learned” from previous reviews of the USF such as the GAO E-rate report.²⁴ The Ratepayer Advocate commends that effort and notes that the House Energy and Commerce Committee has reportedly completed its year-long investigation of the E-rate program and is expected to adopt a report in the coming weeks.²⁵

The Commission also seeks comments with respect to whether it should retain USAC as the permanent administrator of the USF.²⁶ While there are certainly advantages with respect to organizational knowledge and continuity, a contract appointment may be more appropriate. The Ratepayer Advocate intends to examine comments with respect to the performance of the current administrator before weighing in on the issue. In its E-Rate Report, the GAO expresses concern

^{23/} United States Government Accountability Office, “Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program,” GAO-05-151, Report to the Chairman, Committee on Energy and Commerce, House of Representatives, February 2005 (“GAO E-Rate Report”), at 6.

^{24/} *NPRM*, at para. 8.

^{25/} The *National Journal* reports that the House Energy and Commerce Committee has completed its year-long investigation of the e-rate program and is expected to meet to consider adoption of its report on October 18th. “Panel Report Critical of E-Rate,” *See*, <http://www.njtelecomupdate.com/lenya/telco/live/tb-OQTL1129155386860.html>, accessed 10/16/2005.

^{26/} *NPRM*, at para. 12.

regarding the use of a private, not-for-profit corporation as program administrator without a contract or memorandum of understanding.²⁷

The Commission seeks comments with respect to the establishment of performance measures, noting that “clearly articulated goals and reliable performance data allow the Commission and other stakeholders to assess the effectiveness of the USF programs and to determine whether changes are needed.”²⁸ At the same time, the Commission suggests that it should “be careful to measure only the goals of the program and not stray beyond our jurisdiction.”²⁹ The introduction of concrete performance measures may go a long way in addressing concerns with respect to the value of the USF. The Ratepayer Advocate is prepared to review proposals with respect to measuring output and efficiency of the USF programs and administration.

The Ratepayer Advocate commends the Commission’s determination to streamline the application process for the schools and libraries program. Chairman Martin has suggested that using a “formulaic approach to distribute support directly to schools, libraries, and healthcare providers” may ease the burden of the application process for beneficiaries.³⁰ However, Commissioners Adelstein and Copps correctly express reservations with respect to the adoption of an overly formulaic approach.³¹ Commissioner Adelstein suggests that formulas based on school size may “ignore critical differences

²⁷/ GAO E-Rate Report, at Highlights.

²⁸/ *NPRM*, at para. 24.

²⁹/ *Id.*

³⁰/ Statement of Chairman Kevin J. Martin Re: Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, WC Docket No. 05-195, June 14, 2005.

³¹/ Statement of Commissioner Jonathan S. Adelstein Re: Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, WC Docket No. 05-195, June 14, 2005; Statement of Commissioner Michael J. Copps Re: Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, WC Docket No. 05-195, June 14, 2005.

in the cost to obtain services in rural parts of the country and may work against smaller or private schools that cannot achieve economies of scale.”³²

IV. CONCLUSION

WHEREFORE the reasons set forth above the Ratepayer Advocate recommends that the Commission:

- Examine closely the reasons for the growth of the Universal Service Fund. As the Ratepayer Advocate stated in recent comments to the Joint Board regarding the high cost fund, the Commission should “distinguish between the sources of growth in the high cost fund that are inevitable and appropriate, and those reasons which relate to inefficient economic incentives and/or improper cross-subsidization, which the Commission should remedy.” This sentiment applies across all universal service programs. In this proceeding, the Commission should focus on growth of the fund to the extent that it is a direct result of mismanagement and fraud.
- Consider the impact of any proposed reform and performance measures on residential and business consumers, particularly those with low volumes, in rural areas, and/or with low incomes.
- Consider alternative arrangements for contracting with a fund administrator.
- Consider the impact of the adoption of rules and procedures which make it more difficult for the most in need to apply for, and receive, appropriate funds.

^{32/} Statement of Commissioner Jonathan S. Adelstein Re: Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, WC Docket No. 05-195, June 14, 2005, at 2.

In summary, the Ratepayer Advocate applauds the Commission for seeking ways to improve the administration and performance of the universal service programs. The Ratepayer Advocate urges the Commission to ensure that in its implementation of the 1996 Act, consumers can be confident that the contributions they make to the USF are appropriately and properly disbursed and that the programs achieve the goals set out by Congress. As it now stands, mass market consumers are paying higher universal service charges and confronting diminishing opportunities for local competition.

Respectfully submitted,

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE

By: *Ava-Marie Madeam*
Ava-Marie Madeam, Esq.
Asst. Deputy Ratepayer Advocate